

Notice of Allowability

Application No.

09/739,428

Examiner

Aaron Roane

Applicant(s)

FINCH ET AL.

Art Unit

3739

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 12/15/2005.
2. ☒ The allowed claim(s) is/are 20-36.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☒ ~~CORRECTED~~ ^{FORMAL} DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date <u>20060313</u> . |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____. |

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Edward Meagher (Reg. No. 41,189) on 3/13/2006.

The application has been amended as follows:

On page 1 of the specification the following has been added between the end of the "Field of Disclosure" section and the beginning of the "Background of the Disclosure" section:

--Cross Reference to Related Application

This application is a continuation of provisional application Serial No. 60/171,822 filed on 12/21/1999.--

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Claim 20 has been amended such that:

- In lines 4 and 5, the phrase “into mid to outer layers of the” has been changed to -
- into the--.
- In line 8, the phrase “the mid to outer layers of” has been deleted.
- In line 11, the phrase “the mid to outer layers of” has been deleted.
- In line 14, the phrase “the mid to outer layers of” has been deleted and the phrase
“fibrosus: and” has been changed to –fibrosus while avoiding the nucleus
pulposus: and--.
- In lines 18 and 19, the phrase “element sufficiently” has been changed to –
element while avoiding directly heating the nucleus pulposus sufficiently--.

Claim 21 has been amended such that:

- In line 3, the phrase “the mid to outer layers of” has been deleted.

Claim 22 has been amended such that:

- In lines 3 and 4, the phrase “the mid to outer layers of” has been deleted.

Claim 23 has been amended such that:

- In lines 3 and 4, the phrase “the mid to outer layers of” has been deleted.

Claim 24 has been amended such that:

- In line 2, the phrase “the mid to outer layers of” has been deleted.

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Claim 25 has been amended such that:

- In line 3, the phrase “the mid to outer layers of” has been deleted.

Claim 26 has been amended such that:

- In line 4, the phrase “the mid to outer layers of” has been deleted.

Claims 27 and 28 have been amended such that:

- In lines 2 and 3, the phrase “the mid to outer layers of” has been deleted.

Claim 29 has been amended such that:

- In line 3, the phrase “the mid to outer layers of” has been deleted.

Claim 30 has been amended such that:

- In line 6, the phrase “mid to outer layers of” has been deleted.
- In line 7, the phrase “fibrosus to” has been changed to –fibrosus while avoiding the disc nucleus to—.
- In line 9, the phrase “the mid to outer layers of” has been deleted.
- In line 12, the phrase “the mid to outer layers of” has been deleted.
- In line 15, the phrase “the mid to outer layers of” has been deleted.
- In line 18, the phrase “the at least one area” has been deleted.
- In lines 18 and 19, the phrase “the mid to outer layers of” has been changed to – the annulus fibrosus while avoiding directly heating the disc nucleus--.

Claim 32 has been amended such that:

- In line 3, the phrase “the mid to outer layers of” has been deleted.

Claim 33 has been amended such that:

- In lines 3 and 4, the phrase “the mid to outer layers of” has been deleted.

Reasons for Allowance

The following is an examiner’s statement of reasons for allowance:

The prior art does not disclose, imply, suggest, teach and/or provide a properly motivated combination thereof disclosing the treatment of an intervertebral disc with a thermal probe wherein the probe is introduced into the annulus fibrosus without ever entering or passing through the nucleus pulposus.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled “Comments on Statement of Reasons for Allowance.”

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron Roane whose telephone number is (571) 272-4771. The examiner can normally be reached on Monday-Thursday 7AM-6PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A.R. *A.R.*
March 16, 2006

Roy D. Gibson
ROY D. GIBSON
PRIMARY EXAMINER